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# PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

Diepstraten 22-12-2-2

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Typed or printed name \_\_\_\_\_

Application Number

09/919,051

Filed

July 31, 2001

First Named Inventor

Diepstraten et al.

Art Unit

2616

Examiner

Kevin C. Harper

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96)

☒ attorney or agent of record  
Registration number 36,597

☐ attorney or agent acting under 37 CFR 1.34

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

*Kevin M. Mason*

Signature

Kevin M. Mason

Typed or printed name

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Telephone number

February 28, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Patent Application**

5 Applicant(s): Diepstraten et al.  
Case: 22-12-2-2  
Serial No.: 09/919,051  
Filing Date: July 31, 2001  
Group: 2616  
10 Examiner: Kevin C. Harper  
  
Title: Wireless LAN with Enhanced Carrier Sensing

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MEMORANDUM IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW

20 Mail Stop Amendment  
Commissioner for Patents  
P O. Box 1450  
Alexandria, VA 22313-1450

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Sir:

The present invention and prior art have been summarized in Applicants' prior responses.

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STATEMENT OF GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The present application was filed on July 31, 2001 with claims 1 through 6. Claims 1, 2, and 6 were cancelled and claims 7-11 were added in the Amendment and Response to Office Action dated October 31, 2005. Claims 3-5 and 7-11 are presently pending in the above-identified patent application. Claims 5, 7, and 10-11 are rejected under 35 U.S.C. §103(a)  
35 as being unpatentable over Trachewsky et al. (United States Patent Publication Number 2001/0055311) in view of Hasegawa et al. (United States Patent Publication Number 2001/0024454), and claims 4 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Trachewsky et al. in view of Hasegawa et al., and further in view of Williams et al. (United

States Patent Number 5,815,488). The Examiner indicated that claims 3 and 8 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

## ARGUMENTS

### Independent Claims 7 and 11

Independent claims 7 and 11 are rejected under 35 U.S.C. §102(e) as being anticipated by Trachewsky et al. in view of Hasegawa et al. In particular, the Examiner acknowledges that Trachewsky does not disclose detecting the second signal by determining an auto-correlation between a first part and a third part of the signal, but asserts that Hasegawa discloses detecting a data frame by auto-correlation of a first and third portion of the data frame (paragraph 88, lines 1-7). In the Response to Arguments section of the present Office Action, the Examiner asserts that, in Trachewsky, the communication is for network access of terminals, that, in Hasegawa, the autocorrelation is to provide proper reception (synchronization) of a communication, and, therefore, Trachewsky in view of Hasegawa provides an autocorrelation that is used for network access control.

Independent claims 7 and 11 require *utilizing said determination of an auto-correlation to perform network access control*. (Support for this limitation can be found on page 11, line 27, to page 15, line 30, of the originally filed specification.) In the text cited by the Examiner, Hasegawa teaches that

the signal detection processor may comprise a frame boundary detector for detecting a frame boundary of the signal data on the basis of correlation between signal data of a length of a cyclic prefix attached to the head of received data received after off-synchronization is detected and signal data of a length of the cyclic prefix attached to the tail of the same, and a frame boundary detection type correlation operation controller for making the correlation operator carry out the correlation operation on a frame specified by a frame boundary detected by the frame boundary detector.  
(Paragraph 0088.)

The ground of rejection is respectfully traversed because the Examiner has failed to establish a *prima facie* case of obviousness in that there exists no motivation to combine the

references, and further, even if combinable, the references collectively do not teach each and every limitation of the independent claims. Cf. M.P.E.P. §2143. Applicants could find no disclosure or suggestion by either Trachewsky et al. or Hasegawa of *utilizing a determination of an auto-correlation to perform network access control*. Furthermore, Applicants could find no disclosure or suggestion in either of the cited references to combine the network access of Trachewsky with the techniques disclosed by Hasegawa. Other than with the Examiner's hindsight created by the present invention, there is no motivation to combine the cited references. Thus, Applicants maintain that such a combination would not be obvious to a person of ordinary skill in the art.

Thus, Trachewsky et al. and Hasegawa et al., alone or in combination, do not disclose or suggest utilizing said determination of an auto-correlation to perform network access control, as required by independent claims 7 and 11.

#### Additional Cited References

Williams was also cited by the Examiner for its disclosure of OFDM for use in an ADSL system. Applicants note that Williams is directed to a communications method which permits multiple users to simultaneously access an RF channel with a high degree of immunity to channel impairments. (See, Field of the Invention.) Williams does not, however, address the issue of utilizing a determination of an auto-correlation to perform network access control.

Thus, Williams et al. do not disclose or suggest utilizing said determination of an auto-correlation to perform network access control, as required by independent claims 7 and 11.

#### Dependent Claims 3-5 and 8-10

Claims 5 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Trachewsky et al. in view of Hasegawa et al., and claims 4 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Trachewsky et al. in view of Hasegawa et al., and further in view of Williams et al.

Claims 3-5 and 8-10 are dependent on independent claims 11 and 7, respectively, and are therefore patentably distinguished over Trachewsky et al., Hasegawa et al., and Williams et al., alone or in combination, because of their dependency from independent claims 7 and 11 for the reasons set forth above, as well as other elements these claims add in combination to their

base claim. The Examiner has already indicated that claims 3 and 8 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

5 All of the pending claims following entry of the amendments, i.e., claims 3-5 and 7-11, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

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Respectfully submitted,

Date: February 28, 2007



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